

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

SHIRLEY BUTLER  
Respondent

Case No.: I-00-40902

**FINAL ORDER AND ORDER**  
**DENYING APPLICATION FOR PAYMENT PLAN**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701 *et seq.* (1981 ed.)) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (I-00-40903) served July 13, 2001, the Government charged Respondent Shirley Butler with two violations of 29 DCMR 306.1 for allegedly committing an illegal act by tampering with two health certificates.<sup>1</sup> The Notice of Infraction alleged that these

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<sup>1</sup> 29 DCMR 306.1 provides:

- The Mayor shall be required, after providing notice and opportunity for hearing in accordance with § 108, to deny, refuse to renew, or to suspend or revoke any license if he or she finds any of the following:
- (a) Failure to comply with the provisions of this chapter;
  - (b) Failure to comply with any other federal or District law or regulation applicable to child development facilities; or
  - (c) That any licensee, or person in charge of the facility, has committed, aided, abetted, or permitted to be committed, any acts of dishonesty, fraud, gross negligence, abuse, assault, battery, or other illegal acts in the operation of the facility.

violations occurred or were determined on May 31, 2001 at 2700 33<sup>rd</sup> Street, SE, and sought a fine of \$500 for each violation.

On July 31, 2001, the Government submitted a Summary Motion to Amend Notice of Infraction to substitute a charge of violating 29 DCMR 325.13 for each charge of violating 29 DCMR 306.1.<sup>2</sup> In support of its motion, the Government stated that the reference to 29 DCMR 306.1 was erroneous, and that the amended reference to 29 DCMR 325.13 would not result in any change in the fine originally sought. For good cause shown, this administrative court granted the Government's motion.

On August 1, 2001, this administrative court received Respondent's plea of Admit with Explanation to the violations as charged pursuant to D.C. Code § 6-2712 (a)(2) (1981 ed.).<sup>3</sup> In her accompanying explanation, Respondent stated that she admitted "Committ[ing] An Illegal Act of Tampering With A Health Certificate" as charged in the Notice of Infraction by submitting false health certificates to the Department of Health, Health Regulation Administration ("HRA"), on behalf of herself and her alternate Janie Furman. Respondent explained that she committed the violation because she did not have health insurance "at the time that the examination was needed for renewal of my license." Respondent further explained that

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<sup>2</sup> 29 DCMR 325.13 provides: "Each child development facility employee shall have an annual health examination by a licensed physician. A written report stating that the person is free from tuberculosis and other disease in a communicable form shall be submitted by the physician to the facility caregiver or director."

<sup>3</sup> Respondent's plea was received one day prior to the Government's amendment of the charges. Given the nature of the amendment, the fact that there was no change in the amount of fines sought, and the lack of any objection by Respondent, I conclude under the facts presented that Respondent's plea to the violations as charged in the Notice of Infraction applies with equal force to the amended charges. *Accord DOH v. Tibbs*, OAH No. I-00-40304 at 3 (Final Order, April 20, 2001).

she now had health insurance, and that she and Ms. Furman had completed the necessary health examinations. Finally Respondent requested a monthly payment plan for the fines sought by the Government.

On August 8, 2001, the Government submitted a response to Respondent's plea and request. The Government represented that, in light of the validity of the documents submitted to HRA by Respondent subsequent to the issuance of the Notice of infraction, it would not oppose a reduction from \$500 to \$250 for each of the violations, as amended, to be paid in installments.

## **II. Findings of Fact**

1. At all relevant times, Respondent was the licensee for a child development home (license # 907254) operating at 2700 33<sup>rd</sup> Street, SE. *See* 29 DCMR 399.1.
2. At all relevant times, June Furman served as an alternate to Respondent at the child development home.
3. By her plea of Admit with Explanation, Respondent admitted she had twice violated 29 DCMR 325.13 on or about May 31, 2001 at 2700 33<sup>rd</sup> Street, S.E.
4. On or about May 31, 2001, Respondent and her alternate failed to have an actual annual health examination and certificate by a licensed physician stating that Respondent and her alternate were free from tuberculosis and other disease in a communicable form. Instead, Respondent submitted falsified health certificates to this effect to HRA as part of her child development home's license renewal process.

5. Respondent has requested a payment plan to be arranged for any fine imposed for the admitted violation.
6. Respondent has accepted responsibility for her unlawful conduct.
7. There is no evidence in the record of a history of non-compliance on the part of Respondent.
8. In light of Respondent's subsequent efforts to come into compliance with the requirements of 29 DCMR 325.13, the Government does not oppose reducing the \$500 fine sought for each violation of 29 DCMR 325.13 to \$250, to be paid installments.

### **III. Conclusions of Law**

1. On or about May 31, 2001, Respondent twice violated 29 DCMR 325.13. A fine of \$500 is authorized for each violation, for a total of \$1000. *See* 16 DCMR 3222.1(r).
2. In light of the Government's recommendation to reduce the fine, Respondent's acceptance of responsibility and the lack of evidence in the record of a history of non-compliance, the fine for each violation will be reduced to \$250, for a total of \$500. *See* D.C. Code §§ 6-2712 (a)(3), 6-2703(b)(6) (1981 ed.); U.S.S.G. § 3E1.1; 18 U.S.C. § 3553.
3. Respondent has requested a payment plan for any imposed fine. Whether to allow payment of fines in installments pursuant to a payment plan is committed to the discretion of the presiding administrative judge by D.C. Code § 6-2703(b)(5)

(1981 ed.). Respondent's prior assertion that she could not make a one-time payment of \$1,000 is inapplicable here because the fine has been reduced to \$500. Even if applicable, such an assertion, without more, is insufficient for me to determine whether a payment plan is appropriate in this case. As such, Respondent's application for a payment plan is denied, but may be renewed as set forth in this Order.

#### **IV. Order**

Therefore, upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby this \_\_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Respondent shall pay fines in the total amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715 (1981 ed.)); and it is further

**ORDERED**, that, except as otherwise specified in this Order, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1) (1981 ed.), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that Respondent's request for a payment plan is **DENIED WITHOUT PREJUDICE**. Respondent is permitted to renew her request for a payment plan in light of the disposition of this matter within ten (10) calendar days of the date of mailing of this Order. Respondent should include with her request copies of her most recent federal or District of Columbia tax return, and any recent bank statements or relevant balance sheets and/or cash flow statements from her business, or any other documentation or affidavits regarding her business that demonstrate limited financial resources or other reasons why she cannot reasonably afford to pay the outstanding \$500 in fines at one time. A timely request under this Order by Respondent for a payment plan will stay her obligation to pay the imposed fines pending the disposition of her request; and it is further

**ORDERED**, that, except as otherwise specified in this Order, failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f) (1981 ed.), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i) (1981 ed.) and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(7) (1981 ed.).

/s/      **12/21/01**

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Mark D. Poindexter  
Administrative Judge